

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

_____	)	
Notice of Proposed Rulemaking	)	
	)	CS Docket No. 02-52
Appropriate Regulatory Treatment for	)	
Broadband Access to the Internet over	)	
Cable Facilities	)	
_____	)	

Comments of the City of Waterford, a General Law City in the  
State of California

These comments are filed by the City of Waterford in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Waterford believes that (a) local communities should be able to require cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Waterford is a City of 7,100. It is served by Charter

Communications, which has approximately 1,000 subscribers. The cable system serving our community offers subscribers 78 channels. Cable modem service is offered in our community.

## 2. Our franchise and cable modem service.

Our franchise was issued in 1996 and did not directly address cable modem service. However, under our franchise the definition of gross revenues is broad enough to include cable modem service. Pursuant to that provision, we are entitled to receive franchise fees on cable modem service. We received \$30,348.45 in cable franchise fees in 2001. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. We estimate that we will lose needed revenue over the next year, if we cannot charge a fee on revenues from cable modem service.

## 3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects.

- ◆ Cable modem service is marketed jointly with cable service.
- ◆ When we get complaints about promotional practices, the complaint may apply to both services.
- ◆ A single bill is sent for cable modem and cable services, so billing complaints involve both.
- ◆ Customer services calls go to a single number, so telephone answering policies affect both.
- ◆ A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the service can be affected. Customers are advised on their bill by the cable operator, that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise.

- ◆ the operator is required to provide cable modem service

throughout its service area, and is prohibited from redlining.

- ◆ the operator is prohibited from discriminating against potential customers.
- ◆ the operator is prohibited from demanding exclusive contracts as a condition of providing service to MDUs and others.

However, there are also important protections that did apply under our franchise that may not apply if cable modem services is not a cable service.

#### 4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband had to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend benefits to all. The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

William E. Gnass,  
P.O. Box 2067  
Merced, CA 95344  
City Attorney for the City of Waterford